

STRATEGIC COMPLIANCE OF PPR AND PPA AND LEVEL OF SERVICE RENDERED IN GOVERNMENT AGENCIES

2015

Dissertation submitted in partial fulfillment of the
Requirements for the Degree of
Masters in Procurement and Supply Management

Submitted by

Md. Enamul Hoque

MPSM, Batch # 7

ID: 14282043

Masters in Procurement and Supply Management

May 2015



**BRAC INSTITUTE OF GOVERNANCE AND DEVELOPMENT,
BRAC UNIVERSITY**

Letter of Transmittal

24th May 2015

Dr. Md. Zohurul Islam

Academic Coordinator/Assistant Professor (former)

BRAC University

Dhaka, Bangladesh

Currently: Deputy Director, BPATC, Savar, Dhaka-1343.

Subject: Submission of thesis paper “Masters in Procurement and supply Management”

Dear Sir,

I am very happy of submitting the Thesis paper entitled “Strategic Compliance of PPA and PPR and Level of Service rendered in Government agencies.” ,a report for partial fulfillment of the requirement for the degree of Masters in Procurement and Supply management. The whole work is prepared on the basis of practical working experience, literature review, survey questionnaire, key informant interviews, primary data and secondary data, academic books and journals and Internet also. I have followed your guidelines as per your guidelines as per your direction. I have tried enough to furnish all the materials. What I have achieved during the experience period I shall be highly grateful if you kindly accept this Thesis Paper. This report is very significant as it is one of the most important requirements of completing the Top-up Masters program as said by CPTU. This report is a brief summary of work and experience gained during the research period. I have tried my level best to make this report comprehensive.

I will be pleased to answer any query of you thereby.

Sincerely Yours

Md. Enamul Hoque

MPSM, Batch # 7

ID:14282043

Certificate of acceptance

This is to certify that Md. Enamul Hoque, student of MPSM batch 7, ID#14282043, a participant of CIPS cohort-4, has completed his thesis paper entitled **”Strategic Compliance of PPA’2006 and PPR’2008 and level of service rendered in administrative services.”** under my supervision. He has completed the report as a partial fulfillment of the requirement for the degree of Masters in Procurement and Supply Management (MPSM) in IGS, BRAC University.

This report has been prepared under my guidelines and is a record of bona fide work carried out successfully.

Signature.....

Date.....

Dr. Md. Zohurul Islam

Academic Coordinator/Assistant Professor (former)

BRAC University

Dhaka, Bangladesh

Currently: Deputy Director, BPATC, Savar, Dhaka-1343.

Acknowledgement

Praise be to Allah, the beneficent, the merciful.

At the very beginning I am offering my heart felt gratitude to the Almighty who has enabled me to pursue this masters program in procurement and supply management.

The author owes a debt of gratitude to my family members for their unconditioned love, affection and invaluable guidance throughout life. He would like to thank them for their never ending prayer and encouragement in every step of getting education.

As a procurement professional of Government, I was very enthusiastic about this course. As a student of CIPS accreditation program, here I got the opportunity to be acquainted with the Pros and cons of supply chain management, procurement management. I had shared and exchanged views with many persons and colleagues working as a procurement professional in different sectors, faculty and fellow students of this course. Their suggestions guided me to proceed with this endeavor.

I sincerely acknowledge the scholastic guidance, valuable suggestions, constant and untiring help of my thesis supervisor **Dr. Md. Zohurul Islam**, a dynamic and forward looking research person. My gratitude also goes to **Dr. Dr. Rizwan Khair**, Ex Director,IGS, BRAC University, for his sincere co-operation by providing proper guidance and advice during the course of this study.

I am hereinafter mentioning some names whose assistance and sincere caring throughout this program smoothened the completion my course Dr . **Mridha Fuhad Ahmed**, Training Manager; **Tanzina Mizan**, Program Associate; **Mohammad Zahirul Islam**, Program Assistant.

Declaration

Declared that, except for the contents where specific reference has been made to the work of others, the studies embodied in this thesis is the result of research work, carried by the author.

Neither the thesis nor any part thereof has been submitted or is being concurrently submitted to any other university or other educational institute for the award of any degree or diploma, except for publication.

Md. Enamul Hoque

24th May 2015

TABLE OF CONTENTS

LETTER OF TRANSMITTAL _____	2
CERTIFICATE OF ACCETANCE _____	Error! Bookmark not defined. 3
ACKNOWLEDGEMENT _____	4
DECLARATION _____	5
TABLE OF CONTENTS _____	6-8
ABBREVIATIONS _____	9-10
ABSTRACT _____	11-12
CHAPTER 1: INTRODUCTION _____	
1.1 Background of the study _____	13-15 Error! Bookmark not defined.
1.2 Statement Of the problem _____	15-16
1.3 Hypothesis _____	16
1.4 Research questions _____	16
1.5 Research Objectives _____	16
1.6 Scope and Limitations _____	17
CHAPTER 2 : INTRODUCTION _____	
2.1 Public Procurement Background _____	18
2.2 Development Towards Public Procurement Act and Rules _____	19-20
2.3 Legal framework of Public Procurement in Bangladesh _____	20
2.4 Methods of Public Procurement _____	21-22
2.5 Process of public Procurement _____	22-25
2.6 General principles of Procurement _____	25-26

2.7 Key Performance Indicator: Meaning and importance	26
2.8 Strategic Compliance : Meaning and significance	26
2.9 KPIs	
2.9.1 KPI 1: Percentage of cases transparency and accountability has been ensured.	27
2.9.2 KPI 2: Percentage of cases fraudulent, collusive or coercive practice has been avoided.	27-28
2.9.3 Conceptualisation of Sustainability in Public Procurement	28
2.9.4 KPI 4:Percentage of cases PE maintains records relating to issue of Procurement related documents	28
2.9.5 KPI 5: Percentage of cases justified procurement method has been selected	28
2.9.6 KPI 6: Percentage of cases reasonable procurement plan has been prepared	28-29
2.9.7 KPI 7: Percentage of cases evaluation of tenders and proposals has been completed within the time limit.	29
2.9.8 KPI 8: Percentage of cases tender securities have been forfeited	29-30
2.9.9 KPI 9:Percentage of cases proper procedure has been followed in preparation of technical specifications of goods etc.	30-31
2.9.10 KPI 10: Percentage of cases safe custody of received tenders and restrictions on the disclosure of information relating to procurement has been ensured	31
2.9.11 KPI 11: Percentage of cases all tenders, proposals or quotations has been rejected.	31-32
2.9.12 KPI 12: Percentage of cases proper approval procedure has been followed.	32
2.9.13 KPI 13: Percentage of cases contract has been terminated smoothly	32
2.9.14 KPI 14: Percentage of compensation events	32
2.9.15 KPI 15 Percentage of cases subcontractor or sub-consultant has been appointed.	33
2.9.16 KPI 16 Percentage of cases of joint venture.	33

2.9.17 KPI 9:Percentage of cases proper procedure has been followed in preparation of technical specifications of goods etc.	34
2.9.18 KPI 18 Percentage of cases circumstances is prevalent for adopting other procurement methods than preferred ones.	34
2.9.19 KPI 19: Percentage of cases proper monitoring has been ensured by CPTU and professional misconduct, offences etc have been tried.	34
2.9.20 KPI 20:Percentage of cases e-Government Procurement has been used	34
CHAPTER 3: Methodology	
3.1 Method of collecting data or sampling method	35
3.2 Selection of Study Area	35
3.3 Assessment in point of strategic view	35
CHAPTER 4: Findings from the analysis	
4.1 Introduction	36
4.2 Demographic overview of respondents	36-38
4.3 Analysis through grahs and charts	38-40
4.4 Findings	41-42
4.5 PPR and its impact on controlling ‘Quality of Work’	43
CHAPTER-5: Conclusions and Recommendations	
5.1 Conclusions	44
5.2 Recommendations	44
5.3 Future research direction	45
5.4 Implication	45
Appendices	
Appendix A: Sample Questionnaire	46-48
REFERENCES/BIBLIOGRAPHY	49-50

ABBREVIATIONS

ACC	<i>Anti-corruption Commission</i>
ADB	<i>Asian Development Bank</i>
ADC	<i>Additional Deputy Commissioner</i>
AE	<i>Assistant engineer</i>
ACE	<i>Additional Chief Engineer</i>
ADP	<i>Annual Development Programme</i>
CE	<i>Chief engineer</i>
CGFR	<i>Compilation of general Financial Rules</i>
CIPS	<i>Chartered Institute of Procurement and Supply</i>
CPAR	<i>Country Procurement Assessment Report</i>
CPTU	<i>Central procurement Technical Unit</i>
DOFP	<i>Delegation of Financial Power</i>
DC	<i>Deputy Commissioner</i>
DESC	<i>District E-Service Centre</i>
ELRS	<i>E-Land Record System</i>
EE	<i>Executive Engineer</i>
E-GP	<i>Electronic Government Procurement</i>
EOI	<i>Expression Of Interest</i>
ERD	<i>Economic Relation Division</i>
ESCB	<i>Engineering staff College Bangladesh</i>
GOB	<i>Government of Bangladesh</i>
IFE	<i>Invitation For enlistment</i>
IFT	<i>Invitation For Tender</i>
IMED	<i>Implementation, Monitoring and Evaluation Division</i>
LTM	<i>Limited Tendering Method</i>
MOPA	<i>Ministry of Public Administration</i>
OTM	<i>Open Tendering Method</i>
PEC	<i>Proposal evaluation Committee</i>
POC	<i>Proposal Opening committee</i>
PPA	<i>Public Procurement Act</i>
PPP	<i>Public Private Partnership</i>
PPR	<i>Public Procurement Rules</i>
PPRP	<i>Public Procurement reform Project</i>
PQ	<i>Pre-Qualification</i>

PWD	<i>Public Works Department</i>
TEC	<i>Tender evaluation Committee</i>
TOC	<i>Tender Opening Committee</i>
TDS	<i>Tender Data Sheet</i>
TSTM	<i>Two Stage Tendering Method</i>
UDC	<i>Union Digital Centre</i>
VFM	<i>Value For Money</i>
WB	<i>World Bank</i>

Abstract

Bangladesh is vested with a number of problems. Corruption atops the list. In broad brush, corruption is the abuse of official power for personal gain. Discretionary use of financial power by the big guns has widened the gap between the poor and the rich. There was no strong and consolidated guideline for procurement in public sectors. To streamline these uneven activities an act titled PPA'2006 and PPR'2008 were issued. After that passed 10 years. To make the PEs (Procuring Entities) habituated to using the act and rules properly Public Procurement Reform project was initiated. Officials from different procurement agencies have been trained. Many steps have been taken by CPTU (Central Procurement Technical Unit) to make the use of PPR and PPA popular and easier. We have analyzed a scenario as to how much compliance the PEs are ensuring while procuring both in terms of qualitative and quantitative criteria, subjective and objective perspectives. We made comparative dissection in three different cases namely procurement of goods, works and service. A study has been conducted how much the act and rules have contributed to reduce corruption and to increase the level of service. About 8 years have passes since PPA was enacted. Many departments and organizations are following PPA and PPR. In this context a study is relevant to analyze the strategic compliance of PPA and PPR in the procurement practice of different agencies. In strategic point of view, Transparency, efficiency, accountability, competitiveness, equitable treatment and free & fair competition are essential to be ensured in the procurement using public funds. The Central Procurement Technical Unit (CPTU) of the Implementation Monitoring and Evaluation Division (IMED) is continually monitoring the compliance of PPA 2006 and PPR 2008 by the target agencies in the light of 45 predetermined Key Performance Indicators (KPI). The research has been designed to depict the real scenario of how different government agencies are complying with PPA 2006 and PPR 2008 in their procurement practices. The main objectives of the study are to find out the extent of compliance of PPR 2008 by the target agencies as well as other government agencies and to find out the gap of compliance and scope of improvement for implementation. A questionnaire survey was carried out to collect primary data from different stakeholders related to procurement activities of different PEs of different agencies namely RHD, LGED, BWDB, REB, CAAB, DPHE, DC office. In addition to survey, key informant interviews have been conducted to get the perceptions of few senior officers of the aforesaid departments and IMED. The study result

shows a clear adherence to the rules of PPR 2008 in the target agencies whereas somewhat less in other agencies in carrying out most of the compliance related KPIs. Among the 20 different compliance issues, it has been revealed that respondents replied in an overall positive manner as satisfactory against 15 issues especially of the target agencies. .There is a noteworthy shortfall in case of other agencies. For other 5 issues namely proper procurement method, proper tender opening and evaluation method, safe custody of tenders, smooth termination of contract, and absence of professional misconduct are not satisfactory and a clear improvement is required in these areas. Also, the perceptions of the respondents regarding the issue of releasing payment need to investigate more cautiously as there are ambiguity among the findings of present study, individual consultant's reports and SRGB's report. For improvement of these situations, five specific recommendations have been drawn. These are (i) to induce a mechanism for ensuring safe custody of received tenders, (ii) to ensure smooth termination of contract, timely payment to the contractors, tender should be floated only after availability of sufficient fund, (iii) Adopting proper and justified procurement method (iv) approved guidelines to be followed in tender opening and evaluation and (v) act and rules regarding professional misconduct and other offences should be followed strictly. Procurement personnel from other agencies should also be trained on PPA and PPR.

CHAPTER 1: INTRODUCTION

1.1 Background of the study

It is not that Procurement is a function of the present age. It dates back to the ancient time. At the time when currency was not introduced, goods or products were being exchanged (bartering) between two groups or two people. Then comes money and people starts to procure goods or products in exchange of money. In course of time, the business function and market have expanded all over the world. Now every day we, general people, buy/procure our daily necessity products. Most of the cases, we procure these products from spot market and pay instantly. But when we buy/procure products of greater monetary value, we make a deal or contract with the seller. Government usually procures in large volume which incurs a handsome amount of money. So the government procurement entities enter into a contract with the supplier all over the world. The government has to ensure equality, transparency, accountability and legal obligations for this procurement.

According to rule 2(38) of PPR 2008 "**Procurement**" means the purchasing or hiring of Goods, or acquisition of Goods through purchasing and hiring, and the execution of Works and performance of Services by any Contractual means. When procurement is done with public money, then it is called public Procurement. Until 2003, there was no were originally issued during the British period and slightly revised in 1951 under the Pakistani rule. After Bangladesh's independence, few changes were made to these rules in 1994 standard and legal framework for public procurement in Bangladesh and General Financial Rules (GFR) had regulated public procurement procedures and practices in Bangladesh. These rules and 1999 respectively (Islam, 2011). To ensure transparency and accountability in the procurement of goods, works or services using public funds, and ensuring equitable treatment and free and fair competition among all persons wishing to participate in such procurement, the Government of the People's Republic of Bangladesh has enacted Public Procurement Act 2006 (hereinafter called PPA 2006) on 06 July 2006. Under the framework of PPA 2006, the government issued Public Procurement Rules 2008 (hereinafter called PPR 2008) which has come into effective on January 31, 2008. All

these were the outcomes of the reform process taken by the government to streamline the public procurement. Earlier in 2003, Public procurement Regulations 2003 which was effective till the PPR 2008 was issued (Hoque, 2010). Upon issuance of the PPA 2006 and PPR 2008, the government agencies are bound to follow the Act and Rules in the day to day procurement activities of their own. The Central Procurement Technical Unit (CPTU) of the Implementation Monitoring and Evaluation Division (IMED) of the Ministry of Planning have been established for carrying out the purposes of Section 67 of PPA 2006 which states as follows:

Section 67: *For carrying out the purposes of the Act, the Government shall, through a Central Procurement Technical Unit or any other unit established by it relating to procurement monitoring, coordination and management, perform the following responsibilities, namely – a. Providing for monitoring compliance with and implementation of this Act through the authority as designated by the Government; b. Arranging for performance of the necessary functions and responsibilities incidental thereto, through the authority as designated by the government and c. Performing any other responsibilities as prescribed.*

To provide for monitoring compliance with implementation of this Act and Rules, the government of Bangladesh has undertaken Public Procurement Reform Project II (PPRP II) in 2009. The aim of project is to progressively improve the performance of public Procurement system in Bangladesh, focusing largely on the target agencies, namely Bangladesh Water Development Board (BWDB), Roads and Highways Department (RHD), Local Government Engineering Department (LGED) and Rural Electrification Board (REB). Among the four components of PPRP II, the **Second** one is the strengthening procurement management at sectoral /agency level and CPTU to develop an MIS system for reporting Procurement activities and M&E system for monitoring the compliance of PPA 2006 and PPR 2008 by the target agencies in the light of 45 predetermined Key Performance Indicators (KPIs). The KPIs were developed taking cognizance of the OECD-DAC (Organization for Economic Cooperation and Development-Development Assistance Committee) indicators within the overall framework of the PPA/PPR and its features within the local context. Interestingly, these Acts and Rules were greatly influenced by international development agencies and banks such as the World Bank, partly because Bangladeshi public procurements tended to rely mostly on external aid. Despite the fact that the primary objective of the pre-1996 legal instruments was to ensure openness and

transparency in the public procurement system, the procurement process that was in practice was far from satisfactory level. A World-Bank led assessment of the existing public procurement policy, legal frameworks, and institutions concluded with a finding of just-mentioned drawbacks in the procurement. In the context of escalating concerns for streamlining the country's public procurement system, the government undertook an array of reforms in order to strengthen the public procurement regime. The reform process ultimately led to the making and issuance of Public Procurement Regulations in 2003, providing a unified procurement processing system. The PPR 2003 was supplemented by Public Procurement Processing and Approval Procedures (PPPAP), a revised Delegation of Financial Powers (DOFP) and several Standard Tender Documents (STDs) and Standard Request for Proposal Documents for the procurement of goods, works and services.

1.2 Statement Of the problem: Since its independence in 1971

Bangladesh has been fighting for poverty reduction and development of its peoples' living standard. There are lot of problems prevalent in various sectors. Bangladesh could not achieve development to that level that was supposed to achieve with the resources available. One of the reasons for this failure is mismanagement, i.e proper use of resources in a right way. A huge amount of money is spent in each year for the development programme. Due to the inefficiency in procurement activities and absence of proper procedures, these procurement functions are not done properly and that's why Bangladesh could not achieve its goal so far. There were not present enough training facilities for the procurement managers and not so many research work and development on procurement practice. But in recent days it is improving and procurement functions are being done efficiently. But there are also other problems, such as political influence, corruption, coercion etc. Sometimes government changes Acts and Rules for special purposes and these go in favor of some parties. And overall, doing procurement works fairly and efficiently is very difficult in Bangladesh. In presence of these problems, PPA and PPR have standardized procurement functions among all the procuring agency/department of Bangladesh. Beside these, there are some drawbacks and limitations of these rules and procedures. Due to these drawbacks & limitations, the procuring entity has to face various problems. Some procuring entity demands that the procurement functions and

performance were better before the PPA and PPR came into force. The rules and the Acts made the procurement functions clumsier than before. The objective of my research work is to identify these irregularities and propose suggestions to overcome these problems.

1.3 Hypothesis

PPA and PPR made positive impact on the procurement activities of different government agencies. The positive impact could be increased by improving PPA and PPR with adequate amendments and/or adding/subtracting necessary acts and rules with these Legal Frameworks.

1.4 Research questions

Do really PPA and PPR improve procurement functions in different government agencies?

What is the general perceptions of people related to the advantages supplemented by the procurement activities following PPA 2006 and PPR 2008s?

1.5 Research Objectives:

To identify and bring out the effect of PPA and PPR in different procuring agencies' procurement functions. Are these Rules and Acts keeping adequate role in achieving 'Project Triangle' (Quality, Cost and Time) or they are creating obstacles (making clumsy) in the procurement functions? Are they adequate to create transparency and accountability in public procurement? Is the procurement being managed by these Acts and Rules fairly? If there any problems, what are these and how can these be overcome? Also, propose some Acts and Rules which could be added to PPA and PPR for the improvement in public procurement to ensure transparency and accountability.

1.6 Scope and Limitations

The study is primarily focused to explore the reality of the procurement functions in different government agencies with and without PPA & PPR. This study will give a clear indication of the necessity of PPA and PPR in their procurement functions. This study will also clarify the confusions among the procuring entities about the necessity of PPA and PPR. This study will also identify the drawbacks and limitations of PPA and PPR and will suggest necessary corrections to overcome the problems. There are some limitations and constraints on the way of doing this research work. Since this study is a requirement of partial fulfillment of an MA degree in Procurement and Supply Management, the study was required to be completed within a stipulated timeframe, which was very limited. The study was based on both primary and secondary data. But due to time and resource constraints it was not possible to collect data from the right sources. In that case the data were collected randomly for survey purpose. Again scarcity of related academic materials and studies on the subject area in the Bangladesh context was also a major constraint. Moreover time is very short for this research work. There are also budget constraints.

The limitations of this study have come from both its scope and its methodology. Survey was confined to Kurigram and some offices from Dhaka. The respondents were selected mainly on the basis of researcher's convenience. Key informant interview was conducted on few senior officers. This issue had come across during the interviews. Also the officers were requested to give answers based on their own perception. As the perceptions on situation varied from person to person, this may have been a major limitation of the study.

Chapter-2 : Literature Review

2.1 Public Procurement Background

In the Constitution of the People's Republic of Bangladesh there are no direct provisions that concern public procurement. The Constitution has, however, expressly mentioned such basic values as- the rule of law, democracy, equality, and justice, which can be interpreted to be the sources of public obligation of integrity in state activities. Despite the absence of direct constitutional provisions, the institutional and legal frameworks for public procurement in Bangladesh, which are of recent origin, can be seen to have derived their legitimacy from the Constitution of Bangladesh. The Constitution, however, mandates that all powers of the state must be exercised on behalf of the people and only under the authority of the Constitution. The executive organ of the state has thus the constitutional competency to enter into and award public contracts for the purpose of procuring goods and services. The above provisions of the Constitution and the nation's foundational values confirm that good governance (or rule of law) imperatives are constitutionally inherent, which undoubtedly bind the public procurement regime.

Public Procurement System in Bangladesh is decentralized. However, while every single department can procure services or goods, it is the Ministry of Finance and the Ministry of Planning which have some distinct responsibilities vis-à-vis public procurement. For example, to facilitate an efficient and open system of public procurement in Bangladesh the Central Procurement Technical Unit (CPTU) has been working since 2002, providing for, among other things, information and technical know-how required in public procurements. On the other hand, the Ministry of Finance issues, from time to time, instructions as to financial powers which public entities may exercise in procuring goods or services. Further later, in order to intensify the improvement measures in the public procurement system, the House of the Nation enacted the much desired law, the Public Procurement Act 2006. Under the Act of 2006, the Public Procurement Rules 2008 were framed and issued, which replaced the Public Procurement Regulations 2003 which until then continued to have effect.

2.2 Development towards Public Procurement Act and Rules

Two principal legal instruments to deal with public procurement are the Public Procurement Act 2006 and Public Procurement Rules 2008. Until the enactment of the Public Procurement Act in 2006, the legal regime of public procurement in Bangladesh was based on procedures and practices that date back to the British era. For example, the Compilation of General Financial Rules (CGFR), originally issued under the British rule, which broadly outlined the principles governing government contracts, remained the primary legal framework for public contracts and procurements (World Bank, 2002). Building on CGFR principles, several government departments and autonomous public bodies and corporations developed their own rules and codes of practices for public contracts and largesse to follow. Interestingly, these regulations were greatly influenced by international development agencies and banks such as the World Bank, partly because Bangladeshi public procurements tended to rely mostly on external aid. Despite the fact that the primary objective of the pre-1996 legal instruments was to ensure openness and transparency in the public procurement system, the procurement process that was in practice was far from satisfactory.

The following factors were widely regarded as having contributed to the then tardy and dilatory procurement system: poor advertisement, inadequate bidding period, poor specifications, nondisclosure of selection/competition criteria, award of contract by lottery without having developed the tools of attracting quality bidders, conclusion of one-sided contract documents, negotiation with all bidders, re-bidding without adequate grounds, corruption and outside influences such as political interventions, and, so on.

The so detected poor performance of the public procurement regime in Bangladesh drew the attention of many international bodies. A World-Bank led assessment of the existing public procurement policy, legal frameworks, and institutions concluded with a finding of just-mentioned drawbacks in the procurement. In the context of escalating concerns for streamlining the country's public procurement system, the government undertook an array of reforms in order to strengthen the public procurement regime. The reform process ultimately led to the making and issuance of Public Procurement Regulations in 2003, providing a unified procurement processing system. The PPR 2003 was supplemented by Public

Procurement Processing and Approval Procedures (PPPAP), a revised Delegation of financial powers (DoFP) and several Standard Tender Documents (STDs) and Standard for Proposal documents for the procurement of works, goods and services.

2.3 Legal framework of Public Procurement in Bangladesh

Procurement systems share some common objectives such as value for money (VFM), fair treatment, non-discrimination, integrity, and social and industrial development (Arrow Smith, 2004: 18). Generally, competition and transparency are widely regarded as the two principles which are utilized to achieve these objectives. In terms of employing these principles, the procurement laws in Bangladesh are no exception. The Preamble to the PPA 2006, for example, says that the objective of this law has been to provide for procedures to be followed for ensuring transparency and accountability in the procurement of goods, works and services using public funds and for ensuring equal treatment and a free and fair competition amongst all persons wishing to participate in public procurements. While considerable flexibility is given to government departments with regard to purchases and contracting, accountability remains at the core of concerns of the Bangladeshi public procurement legal regime, as the preamble to the Procurement Act projects.

In the Act of 2006, the term ‘procurement’ itself has been broadly defined to include purchasing or hiring of goods or acquisition of goods through hiring and purchasing, execution of works and performance of any services by any contractual means.¹⁵ Section 7 aims at widening the scope of the Act covering government, semi-government and statutory public bodies, other procuring entities that use public funds, and even companies that procure by using public funds, and any procurement under any loan, grant, or credit agreements with development partners.

2.4 Methods of Public Procurement

The Act provides for several methods of procurement, prescribes rules to determine prequalification of the potential/participating bidders, if applicable, leverages for competition amongst the tenders, and stages of the procurement processes. The Act divides the procurement into domestic and international classes. As for the domestic procurement of goods, related services, and works, the preferred method prescribed is the open tendering method (OTM). However, procurement methods alternative to the OTM are also allowed with the permission of the head of procuring authority and on technical and economic grounds. These alternative methods are: limited tendering method (LTM), direct procurement method (DPM), two-stage tendering method (TTM), and the request for quotation method (RFQM). There are essential conditions that need to be met before taking resort to each of these alternative methods. For example, LTM applies when suppliers of goods or services are limited in number or the time and cost required to receive and evaluate tenders would outweigh the value of the contract. Direct method is allowed when, for technical reasons, only one tender is available, or for additional procurement of goods or services from the original supplier/contract, or for the procurement of goods, services, and works of very urgent and essential nature. Request for Quotation (RFQ) method may be used for off the shelf low value goods or physical strives available in the market or for the procurement of goods for urgent repairs or maintenance. Two stage tendering methods (TSTM) may be followed for complex and large projects or when complete technical specifications may not be possible at one stage or where alternative solutions are available in rapidly evolving industries. Similar processes (such as open tendering, limited tendering, quotation method, and the two-stage tendering method) and requirements for international procurements are made mandatory by the Act with certain significant differences to maintain standards and competition. For example, in an international procurement through open tendering method technical specifications should be made in a way that conforms to international standards. Moreover, in case of international procurements joint ventures with local partners by foreign suppliers/contractors may be encouraged but must not be imposed as a condition. Also, it is mandated that provisions for alternative dispute resolutions should be incorporated in the contract.

This needs further specification. For example, it has been a condition precedent to taking 'limited tendering method' if and only if the subject matters, by reason of their specialized

nature, are available only from a limited number of suppliers/ contractors, local or international, as the case may be. It thus may be argued that despite the existence of administrative control mechanisms, there are open chances for the abuse by procuring entities of the discretion to prefer one particular method to the other. The law also provides for 'emergency flexible purchases'. Section 68 of the PPA provides that in order to meet a national urgency or a catastrophic event, the government in the public interest and with the recommendation of the Cabinet Committee on Economic Affairs may procure goods/services on an urgent basis by following the direct purchase method or any other method as provided in s. 32 of the Act.

It should be noted with emphasis here that the government preserves the power to exempt procurements from the operation of the PPA 2006 in the interest of national security and defense. Although the defense purchases in Bangladesh are also subject to the PPA and PPR as well as internal audit at the Defense Services, there is inadequate information about them in general and about big and complex defense procurements in particular. This gap in the legal control of defense procurements should be considered while initiating reforms in public procurement regime.

2.5 Process of public Procurement

Public procurements in Bangladesh are processed mainly through a four-tier process:

- (i) Advertising the invitations for tenders/quotations,
- (ii) Evaluation,
- (iii) Approval, and
- (iv) Awarding of contract.

The first step for a procuring entity to take is to advertise Invitations for Pre-Qualification (IFPQ), Invitations for Enlistment (IFE), Invitations for Tender (IFT) and Request for Expressions of Interest (REOI) concerning the procurement of goods with related services, works and intellectual services. The advertisements, following prescribed formats and maintaining the Time frame, are to be published in at least two widely circulating daily news

papers, in choosing which the entity should apply 'sound judgment'. It is important to note that all invitations shall also be advertised in the procuring entity's website, if any. It means that having a website is still not mandatory. Secondly, the procuring entity may opt for inviting only –pre-qualified applicants in which case there is a list of such applicants drawn through the prescribed rule. A procuring entities may undertake pre-qualification for a number of large and complex procurements such as construction works, maintenance works, design and build infrastructure, and so on. However, a procuring entity has a duty to carefully consider the merits and demerits of pre-qualification before initiating the Pre-Qualification process for procurement of goods or works. PQ applications are opened by Tender Opening Committee (TOC), which shall then be evaluated by the tender evaluation committee (TEC) that may be supported by a Technical Sub-committee constituted by the Head of the procuring entity. The next step is the opening of tenders. There is a tender/proposal opening committee (TOC/POC) in each procuring entity. Following the deadline of submitting tenders, the procuring entity convenes the meeting for tenders-opening. Tenders are required to be opened promptly and publicly at the time and place specified in the IFT. Thereafter, the evaluation committee of the procuring entity evaluates the tenders on the basis of pre-disclosed criteria and technical specificities and by following the rules and principles of procurement. The members of evaluation committee, which need to be constituted fairly/transparently, have to sign a declaration of impartiality, and the committee is to certify that evaluation has been made in accordance with the rules of the Act. TEC sends its report along with recommendations to the Approving Authority and, the Approving Authority shall make its decision as to whom to award the contract. As a matter of rule, the lowest evaluated tender being the 'responsive tender', that is the one which does not meaningfully alter or depart from the technical specifications, characteristics and commercial terms and conditions of the Tender Document, becomes the successful tender.

The first step for a procuring entity to take is to advertise Invitations for Pre-Qualification (IFPQ), Invitations for Enlistment (IFE), Invitations for Tender (IFT) and Request for Expressions of Interest (REOI) concerning the procurement of goods with related services, works and intellectual services. The advertisements, following prescribed formats and maintaining the Time frame, are to be published in at least two widely circulating daily news papers, in choosing which the entity should apply 'sound judgment'. It is important to note that all invitations shall also be advertised in the procuring entity's website, if any. It means that having a website is still not mandatory. Secondly, the procuring entity may opt for inviting only –pre-qualified applicants in which case there is a list of such applicants drawn through the prescribed rule. A procuring entities may undertake pre-qualification for a number of large and complex procurements such as construction works, maintenance works, design and build infrastructure, and so on. However, a procuring entity has a duty to carefully consider the merits and demerits of pre-qualification before initiating the Pre-Qualification process for procurement of goods or works. PQ applications are opened by Tender Opening Committee (TOC), which shall then be evaluated by the tender evaluation committee (TEC) that may be supported by a Technical Sub-committee constituted by the Head of the procuring entity. The next step is the opening of tenders. There is a tender/proposal opening committee (TOC/POC) in each procuring entity. Following the deadline of submitting tenders, the procuring entity convenes the meeting for tenders-opening. Tenders are required to be opened promptly and publicly at the time and place specified in the IFT. Thereafter, the evaluation committee of the procuring entity evaluates the tenders on the basis of pre-disclosed criteria and technical specificities and by following the rules and principles of procurement. The members of evaluation committee, which need to be constituted fairly/transparently, have to sign a declaration of impartiality, and the committee is to certify that evaluation has been made in accordance with the rules of the Act. TEC sends its report along with recommendations to the Approving Authority and, the Approving Authority shall make its decision as to whom to award the contract. As a matter of rule, the lowest evaluated tender being the 'responsive tender', that is the one which does not meaningfully alter or depart from the technical specifications, characteristics and commercial terms and conditions of the Tender Document, becomes the successful tender. A notification of awards then issued to the successful tendered within one week of the approval of the award by the Approving Authority, attaching therewith the contract with detailed terms and conditions.

Importantly, the powers of the approving authorities are limited in terms of the value of the contract to be awarded, i.e., the value of works, goods, and services to be procured. Known as delegation of financial powers, a statutory instrument clearly defines which authority can authorize the procurement of which value and also by following which method of procurement. For example, in a project or work of more than taka 500 million, may purchase goods of taka 15,000 directly, i.e., without following the quotation method. A notification of awards then issued to the successful tendered within one week of the approval of the award by the Approving Authority, attaching therewith the contract with detailed terms and conditions.

2.6 General principles of Procurement

The Act also provides for general guidelines. It provides for public accessibility to procurement documents and related papers, the issuance of standard documents, and for the framing of one yearly procurement plan with regard to development budget and another plan concerning procurements under revenue budget. The procurement regime in Bangladesh is premised on the principle of non-discrimination. The procuring entity is under an obligation not to prevent any tenderer from entering into procurement processes on the ground of race, colour, sex or any other ground. The procuring entity has an obligation to facilitate competition by making available to all concerned all relevant documents, assessment criteria, and the process for evaluation of tenders/proposals, and so on. To facilitate competition, the procurement entity has to disclose well in advance the required qualification or standards of performance which it could require the tender to have possessed and to demonstrate. Importantly, giving of a minimum time for the applicant/tenderer/ to respond has been mandated. There is also a general prescription as not to split a single procurement into several packages, unless it is extremely urgent and unavoidable. It also provides that the ‘validity period’ of the procurement process/tender, that is the timeframe within which the whole process beginning from the advertisement to the awarding of contract, should be reasonable so that all necessary approvals be obtained by the procuring entity and the contract may be awarded. The law also mandates that the rules relating to deposit of security money, rate of charges of services, and whether any security money so deposited is to be later deducted or rejected in case of unsuccessful bidding, have to be clearly specified. A procurement entity has a duty to maintain the confidentiality of the process from opening of tenders up to

awarding of a contract. Further, any person's attempt to influence the process shall lead to the rejection of his pre-qualification, tender, or proposal. However, following the signing of a contract with the tenderer, the winning tenderer may have necessary information about his application. Any other tenderer may seek for information as to why his or her application or tender was unsuccessful. The procurement entity is obliged to maintain records and to administer efficient management of the contract awarded, and to conduct post-procurement review within nine months of each fiscal year.

2.7 Key Performance Indicator: Meaning and importance

Key Performance Indicators, also known as KPI or Key Success Indicators (KSI), help an organization to define and measure progress toward organizational goals. These KPIs are quantifiable measurements, agreed to beforehand, that reflect the critical success factors of an organization. Once an organization has analyzed its mission, identified all its stakeholders and defined its goals, it needs a way to measure progress toward those goals. Key Performance Indicators are those measurements.

KPIs allow an organization adequate measures of performances from the standardized activities. Importance of performance measuring is very significant, which also can be found in a proverb: *If you want to improve something, you have to measure it*. Velimirovic *et.al.*, (2011) stated that continual measuring is a base for continual improvements of organization performances which is one of the most important management principles.

2.8 Strategic Compliance: Meaning and significance

Compliance means the act adhering to, and demonstrating adherence to, a standard or regulation. In the context of procurement, compliance is the state of being in accordance with the relevant policies, rules and regulations. Strategic compliance includes strategic factors.

Compliance indicates to what extent the procuring entities adhere to the procurement rules and procedures specified in the PPA 2006 and PPR 2008. In my study the level of adherence to government procurement rules attained by the procuring entities has been determined by 20 specific KPIs as shown in **Appendix B**. For the convenience of the study, all KPIs were measured in a 5-point scale. These 20 KPIs are described below:

2.9.1 KPI 1: Percentage of cases transparency and accountability has been ensured.

As stated in the act, the purpose of the act is to ensure transparency, accountability and fair competition, we have selected this point as an indicator.

2.9.2 KPI 2: Percentage of cases fraudulent, collusive or coercive practice has been avoided.

According to rule 127 titled “Professional Misconduct, Offences, Etc” we have selected this point—the rule states:

(1) Procuring Entities and Personsshall, during Procurement proceedings and execution of Contracts, ensure

(a) strict compliance with the provisions of Section 64 of the Act;

(b) abiding by the code of ethics as detailed in Schedule XII of these Rules;

(c) that neither it nor any other member of its staff or any other agents or intermediaries working on its behalf engages in any practice as detailed in Sub-

Rule (2) below.

(2) For the purpose of Sub-Rule (1) the terms -

(a) **corrupt practice** means offering, giving or promising to give, receiving, or soliciting, either directly or indirectly, to any officer or employee of a Procuring Entity or other public or private authority or individual, a gratuity in any form; employment or any other thing or service of value as an inducement with respect to an act or decision or method followed by a Procuring Entity in connection with a Procurement proceeding or contract execution;

(b) **fraudulent practice** means the misrepresentation or omission of facts in order to influence a decision to be taken in a Procurement proceeding or Contract execution;

(c) **collusive practice** means a scheme or arrangement between two (2) or more Persons, with or without the knowledge of the Procuring Entity, that is designed to arbitrarily reduce the number of Tenders submitted or fix Tender prices at artificial, noncompetitive levels, thereby denying a Procuring Entity the benefits of competitive price arising from genuine and open competition; or

(d) **coercive practice** means harming or threatening to harm, directly or indirectly, Persons or their property to influence a decision to be taken in a Procurement proceeding or the

execution of a Contract, and this will include creating obstructions in the normal submission process used for Tenders, Applications, Proposals or Quotations.

2.9.3 KPI 3 : Percentage of cases fair competition has been ensured.

As stated in the act, the purpose of the act is to ensure transparency, accountability and fair competition we have selected this point as an indicator for the measurement of strategic compliance.

2.9.4 KPI 4: Percentage of cases PE maintains records relating to issue of Procurement related documents

According to rule 6 titled ‘Maintaining Records Relating to Issue of Procurement Related Documents’ —

The Procuring Entity shall record the following information when issuing the Pre-Qualification, or

Tender or RFP Documents to a Person, namely—

- (a) reference number relating to the issuance of a procurement related document;
- (b) name and mailing address;
- (c) telephone and facsimile numbers and electronic mail address, if applicable;
- (d) any other information that is considered necessary by the Procuring Entity

2.9.5 KPI 5: Percentage of cases justified procurement method has been selected

The PEs need to follow rule 62 ‘Use of Other Methods for Procurement of Goods, Works, Etc.’ to select procurement method. This KPI has been selected to identify the extent to which justified procurement method has been used.

2.9.6 KPI 6: Percentage of cases reasonable procurement plan has been prepared

16. Preparation of Procurement Plan, Etc. |— (1) Preparation of a Procurement Plan shall be mandatory for all Procuring Entities.

- (2) The Procurement Plan shall include all targeted objects or issues to be procured, irrespective of value or methods, classified by category “such as Goods and related Services, Works, Physical Services and Intellectual and Professional Services”.
- (3) The Procurement Plan shall be separately prepared for Development Projects or Programme and of Revenue Budget. .
- (4) The Procuring Entity shall, for Procurement under a Development Project or Programme, prepare a total Procurement Plan for the entire project period in the formats prescribed by the Government from time to time and attach the same with the Development Project Proposal (DPP) or Technical Assistance Project Proposal (TPP).
- (5) At the beginning of each financial year a Procuring Entity shall update the total Procurement Plan and the official cost estimates for a Development Project or Programme on an annual basis and in a rational manner having regard to, among other things, the expected flow of funds.
- (6) At the beginning of each financial year, a Procuring Entity shall, for Procurement under the Revenue Budget, prepare only an annual Procurement Plan.

2.9.7 KPI 7: Percentage of cases evaluation of tenders and proposals has been completed within the time limit.

Rule 20. Time Limit for Evaluation of Tenders and Proposals |— (1) A Procuring Entity shall complete evaluation of Tenders or Proposals and award of Contract within the initial period of Tender or Proposal validity determined in accordance with Rule 19.

(2) A Procuring Entity in course of determining the Tender or Proposal validity period shall take into account the time-line for the process involving examination, evaluation and approval of the Tender or Proposal and issuance of Notification of Award, as specified in Rule 36.

2.9.8 KPI 8: Percentage of cases tender securities have been forfeited

The causes for the forfeiture of tender securities have been stated in rule **25 ‘Forfeiture of Tender Security’** — (1) A Tender security shall be forfeited if the Tenderer-

- (a) withdraws his Tender after the opening of Tenders but within the validity of the Tender security ; or
- (b) refuses to accept a Notification of Award ; or

- (c) fails to furnish performance security, if so required; or
- (d) refuses to sign the Contract; or
- (e) does not accept the correction of the Tender amount following the correction of arithmetic errors pursuant to Rule 98 (11).

2.9.9 KPI 9:Percentage of cases proper procedure has been followed in preparation of technical specifications of goods etc.

Rule 29 titled ‘Procedure for Preparation of Technical Specifications of Goods, Etc.’ states that— (1) A

Procuring Entity shall at the time of describing requirements in respect of a particular object of

Procurement provide, inter alia, the following information, namely -

- (a) name or description of the Goods, Works or Services to be procured;
 - (b) quality of Goods, Works or Services;
 - (c) required performance Standards and life span;
 - (d) safety Standards and limits ;
 - (e) symbols, terminology to be used in packaging, marking and labelling of the Goods to be procured;
 - (f) processes and methods to be used in the production of the Goods to be procured, where applicable; and
 - (g) test procedure, if any, for conformity assessment of Goods .
- (2) Technical Specifications prepared by Procuring Entities shall, where appropriate, be-
- (a) expressed in terms of performance or output requirements, rather than specifications linked directly to design or descriptive characteristics which may tend to limit competition
 - (b) described in clear terms on the basis of international standards ,if any, or national or authorized national standards or code or generic name .
- (3) There shall be no reference, in technical specification of Goods, to a particular trade mark or trade name, patent, design or type, named country of origin, producer orservice Supplier
- (4) Not withstanding any thing contained in Sub-Rule (3), if a Procuring Entity does not posses adequate technical expertise for preparing generalized technical specifications to make the specifications fully understandable to Tenderers it can make a reference to a particular

branded product, but in such case shall add the words “*or similar or equivalent*” to the specification.

(5) Procuring Entities shall, where possible, prepare the specifications in close cooperation with the concerned user or beneficiary of the Goods or Works or Services, and follow, among others, the Standards approved or published by -

(a) the International Organisation for Standardisation (ISO);

(b) the International Electrotechnical Commission (IEC); and

(c) Standards determined by Bangladesh Standard and Testing Institute (BSTI) or any other national or international institute.

(6) Procuring Entities, in consultation with manufacturers, may standardize specifications for commonly used Goods, such as paper, office equipment and other consumables which are repetitively purchased, and publish them on their website.

By the presence or absence of these factors we will be able to sort out which PEs are following these criteria.

2.9.10 KPI 10: Percentage of cases safe custody of received tenders and restrictions on the disclosure of information relating to procurement has been ensured

Rule 32 “Safe Custody of Received Tenders, Etc.” states that— The Procuring Entity shall ensure the safe custody of the received Applications, Tenders, Quotation or Proposals until they are handed over to the Chairperson of the Evaluation Committee, within the period specified in Schedule II, who will then be responsible for their safety.

2.9.11 KPI 11: Percentage of cases all tenders, proposals or quotations has been rejected.

Rule 33 titled ‘Rejection of all Tenders, Proposals or Quotations’ states that — (1) A Procuring Entity may, in the circumstances as described in Sub-Rule (2), reject all Tenders, Proposals or Quotations following recommendations of the Evaluation Committee only after the approval of such recommendations by the Head of the Procuring Entity.

(2) All Tenders, Proposals or Quotations can be rejected, if -

(a) the price of the lowest evaluated Tender or Quotation exceeds the official estimate, provided the estimate is realistic; or

- (b) there is evidence of lack of effective competition; such as non-participation by a number of potential Tenderers; or
 - (c) the Tenderers are unable to propose completion of the delivery or Works within the stipulated time in its offer, though the stipulated time is reasonable and realistic; or
 - (d) all Tenders, Quotations or Proposals are non-responsive; or
 - (e) evidence of professional misconduct, affecting seriously the Procurement process, is established as per Chapter Seven; or
 - (f) negotiations as per Rule 123 fails.
- (3) Notwithstanding anything contained in Sub-Rule 2(a) , rejection of Tenders or Quotations shall not be mandatory if the lowest evaluated price is in conformity with the market price.
- (4) The Procuring Entity shall carefully review such reasons before a decision is taken to reject all Tenders, Proposals or Quotations for reasons other than the failure of all responsive Tenderers or Applicants to post-qualify in accordance with the criteria

2.9.12 KPI 12: Percentage of cases proper approval procedure has been followed.

Rule 36 titled ‘Procurement Approval Procedure’ states that— (1) The approval procedure as laid down in this Rule, leading up to the Notification of Award (NOA) for a execution of contract under the Act shall be strictly adhered to by the Procuring Entities, Evaluation Committees and Approving Authorities.

2.9.13 KPI 13: Percentage of cases contract has been terminated smoothly.

As stated in rule 40. ‘Administration of Goods Contracts’ and rule 42 ‘Termination of Contracts and Settlement of Disputes’, criteria for smooth contract termination has been selected.

This indicator will help to determine the extent to which contract is being terminated smoothly. Good contract administration implies good procurement management.

2.9.14 KPI 14: Percentage of compensation events.

Compensation event is an important determinant for compliance. So total number of compensation events has brought into account. The better procurement plan and contract management, the less the compensation event. Compensation event arises when there is lack of compliance.

2.9.15 KPI 15 Percentage of cases subcontractor or sub-consultant has been appointed.

It is for determining whether sub-contractor or sub-consultant has been selected according to act and rules as stated in rule 53 ‘ **Appointment of a Subcontractor or a Subconsultant.**

‘— (1) A Procuring Entity may allow a Supplier or Contractor or Consultant to appoint a Subcontractor or a Subconsultant provided that documents supporting appropriate qualifications as specified in the STDs or RFPs is presented.

(2) A firm, proposed as a Subconsultant in any Proposal, may participate in more than one Proposal, but only in the capacity of a Subconsultant.

(3) Qualifications of Subcontractors that have been specifically mentioned in the Tender may be considered only for works assigned for that Subcontractor in the evaluation of Qualification of a Tenderer.

(4) The general experience and financial resources of Subcontractors shall not be added to those of the Tenderer.

(5) An Applicant submitting a Proposal individually, or as JVCA partner, shall not be accepted as a Sub consultant to any other Applicant in the same Procurement process.

(6) In the event that a Subcontractor or a Sub consultant is appointed, the prime Supplier, Contractor or Consultant shall still retain full responsibility for the contract and cannot pass any contractual obligations to the Subcontractor or a Sub consultant and under no circumstances shall

Assignment of the Contract to the Subcontractor or Sub consultant be allowed.

(7) The prime Supplier or Contractor or Consultant shall remain responsible for administering its Subcontractors or Sub consultants and the Procuring Entity’s review of subcontracts shall normally be confined to evaluating the prime Supplier’s, Contractor’s or Consultant’s management of the sub-contracts.

2.9.16 KPI 16 Percentage of cases of joint venture.

The purpose of selecting this KPI is to identify where PEs are following rule 54 in selecting joint venture. For procurement of large value comes the matter of joint venture. Here we will be able to get a picture of the tendency to go for joint venture as well as the financial and technical capability of the contractors /suppliers/consultants.

2.9.17 KPI 17 Percentage of cases complaint has been submitted to review panels.

Complain to the review panels is significant to measure compliance in the sense that it implicates the gravity of dispute. It is also significant to determine how many cases has been referred to review panel and how many have been resolved. It also implies to the complexity of the issues and brings some new dimensions for both the procuring entities and the

2.9.18 KPI 18 Percentage of cases circumstances is prevalent for adopting other procurement methods than preferred ones.

To determine the prevalence of justified circumstances for adopting other procurement methods than preferred ones this point has been picked. If the procuring method other than preferred method is selected there is urgent circumstances or low value procurement.

2.9.19 KPI 19: Percentage of cases proper monitoring has been ensured by CPTU and professional misconduct, offences etc have been tried.

It determines whether monitoring is done according to rule 130 and professional misconduct, offences etc are tried following the proviso stated in rule 127.

2.9.20 KPI 20: Percentage of cases e-Government Procurement has been used

According to the provision stated in rule **128'E-Government Procurement'**— (1) For carrying out the purposes of the Act, any or all government procurement may be undertaken using electronic processing systems following the principles governing e-GP as prescribed by the Government.

(2) In case of procurement following e-GP, should there be any conflict between the provisions of the e-GP rules and the provisions of these rules, then e-GP shall prevail.

This determines the tendency towards adopting E-GP.

Chapter-3: Methodology

3.1 Introduction

PPA and PPR made positive impact on the procurement activities of different government agencies. The positive impact could be increased by improving PPA and PPR with adequate amendments and/or adding/subtracting necessary acts and rules with these Legal Frameworks.

3.2 Methods of collecting data/Sampling method

A combination of questionnaire survey and interview method was adopted for this study. Survey method was used as this is considered as the best method available to the social scientists interested in collecting original data. Also, the interview method was used as this is helpful to gather clear idea on the issue providing insight into the conversation. Both qualitative and quantitative methods were followed in this study. Multiple type questionnaires was used for this study which is given in the **Appendix B**. The questionnaire survey was adopted for collecting primary data from different stakeholders related to procurement activities of different government agencies and having an acquaintance with PPA 2006 and PPR 2008. Before asking for filling the questionnaire, the general idea of the research objectives were exchanged with them. After the exchange of general idea of the research objectives, the questionnaire was given to them. They were requested to fill the questionnaire based on the practical experience they had regarding compliance issues of PPR 2008 based on KPIs in Questionnaire 1. Close end questions were set in the questionnaire to reveal the real perception of the respondents. Three options namely high, medium, low were set to measure the responses against all indicators within a 5-point range.

3.3 Selection of Study Area

Due to time constraint and convenience of the present study, some PEs from Kurigram district and some from Dhaka Quarters were selected for collection of data in the questionnaire. Civil Aviation Authority of Bangladesh (CAAB), Roads and Highways Department (RHD), DC office Kurigram.

Chapter-4: Findings from the analysis

4.1 Demographic overview of the respondents:

Survey Questionnaires were given to respondents from different organizations and ranks. Organizations are RHD, LGED, BWDB, REB, CAAB, DPHE, DC office, Kurigram. The rank of the respondents was Executive engineer, Assistant Engineer, Sub-divisional Engineer, Assistant Commissioner.

4.2 Overview of the survey Questionnaire:

Table No 1: The survey questionnaire

Sl	Indicators	High	Medium	Low
1	In procurement activities transparency and accountability has been ensured.			
2	Fraudulent, collusive or coercive practice has been avoided.			
3	Fair competition has been ensured.			
4	PE maintains records relating to issue of Procurement related documents			
5	Justified procurement method has been selected			
6	Reasonable procurement plan has been prepared			
7	Evaluation of tenders and proposals has been completed within the time limit.			
8	Tender securities have been forfeited			
9	Proper procedure has been followed in preparation of technical specifications of goods etc.			
10	Safe custody of received tenders and restrictions on the disclosure of information relating to procurement has been ensured			
11	All tenders, proposals or quotations have been rejected.			
12	Proper approval procedure has been followed.			
13	Contract has been terminated smoothly.			
14	Compensation events.			

15	Subcontractor or sub-consultant has been appointed.			
16	Events of Joint venture.			
17	Complaint has been submitted to review panels.			
18	Circumstances are prevalent for adopting other procurement methods than preferred ones.			
19	Proper monitoring has been ensured by CPTU and professional misconduct, offences etc have been tried.			
20	e-Government Procurement has been used.			

Table No 2: Frequency distribution of the responses for the questions regarding compliance

KPIs

Indicators	Frequency Distribution (Number)			Total Frequency
	High	Medium	Low	
1	8	3	1	12
2	3	6	3	12
3	5	6	1	12
4	6	4	2	12
5	5	5	2	12
6	4	7	1	12
7	3	7	2	12
8	3	2	7	12
9	6	3	3	12
10	4	5	3	12
11	3	8	1	12
12	4	6	2	12
13	3	6	3	12
14	2	4	6	12

15	4	3	5	12
16	3	2	7	12
17	5	5	2	12
18	3	5	4	12
19	4	4	4	12
20	5	4	3	12

4.3 Analysis through chart& graphs

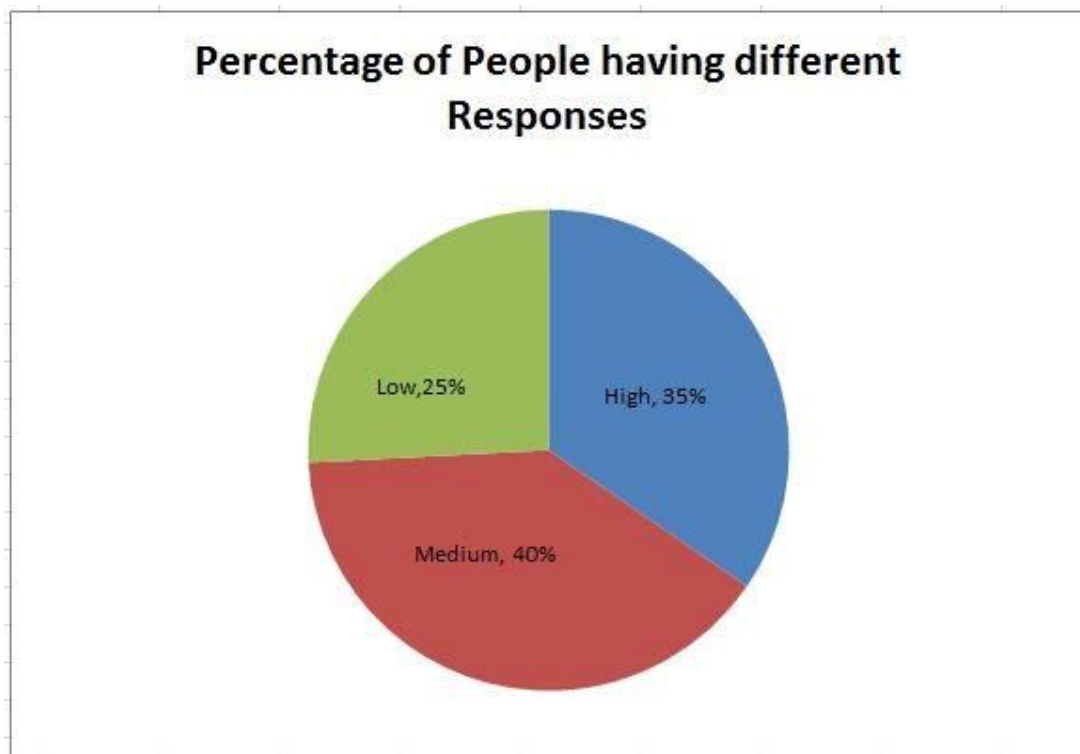


Figure No. 1: Percentage of people having different responses

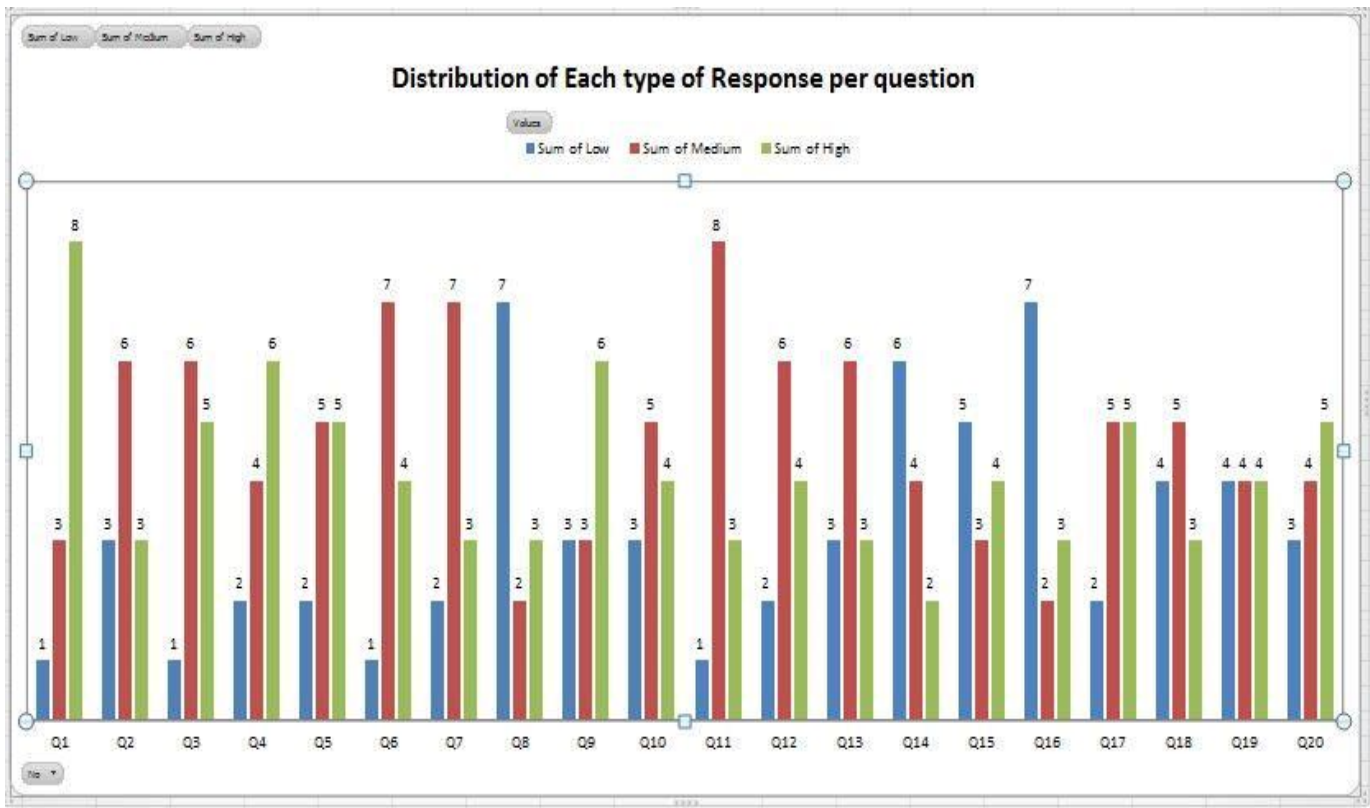


Fig 2: Distribution of each type of response per question

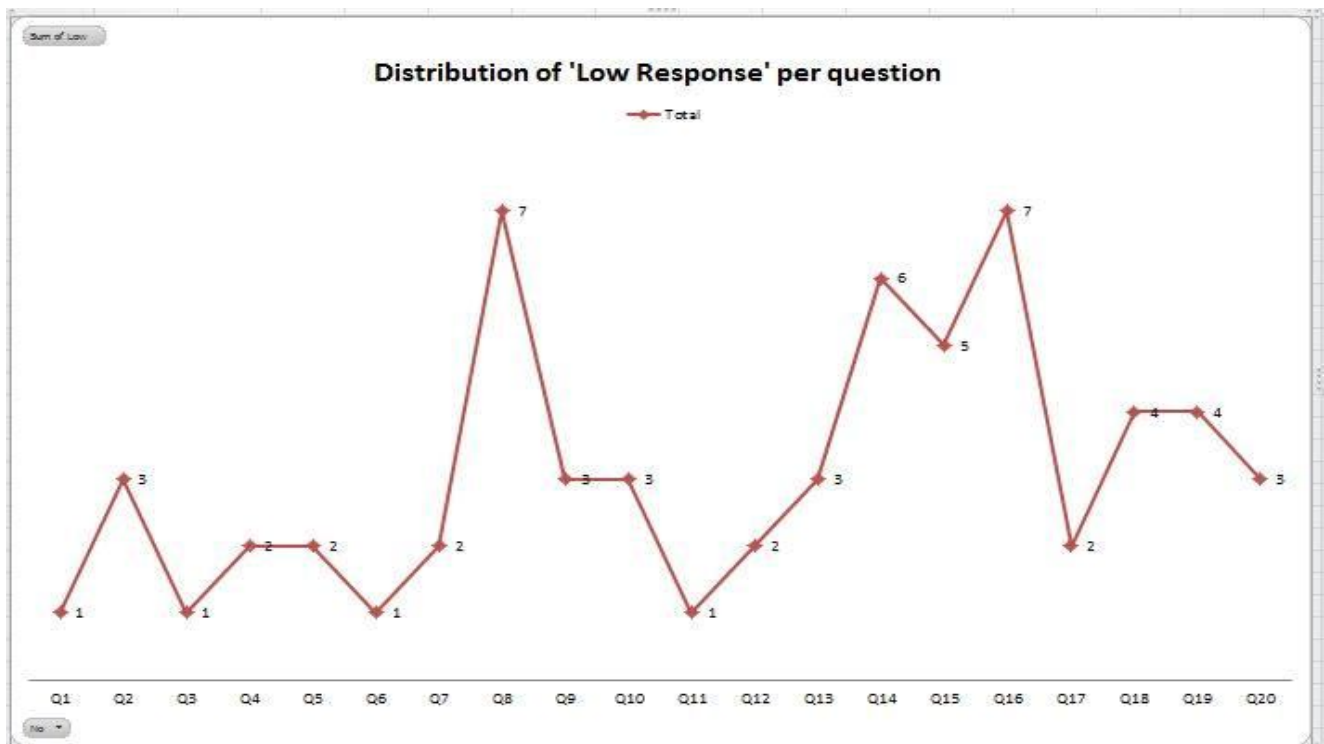


Fig 3: Distribution of 'Low Response' per question

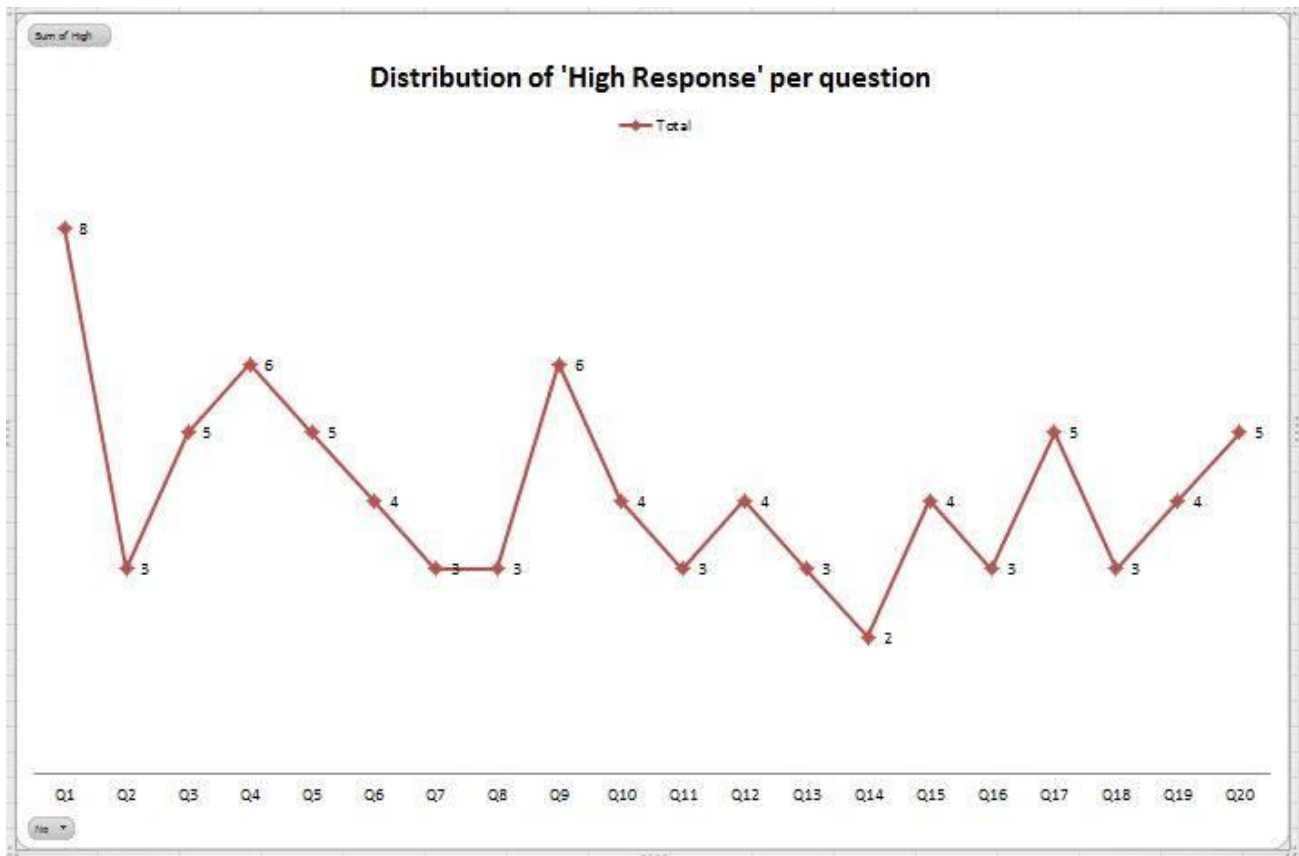


Fig 4: Distribution of 'Medium Response' per question

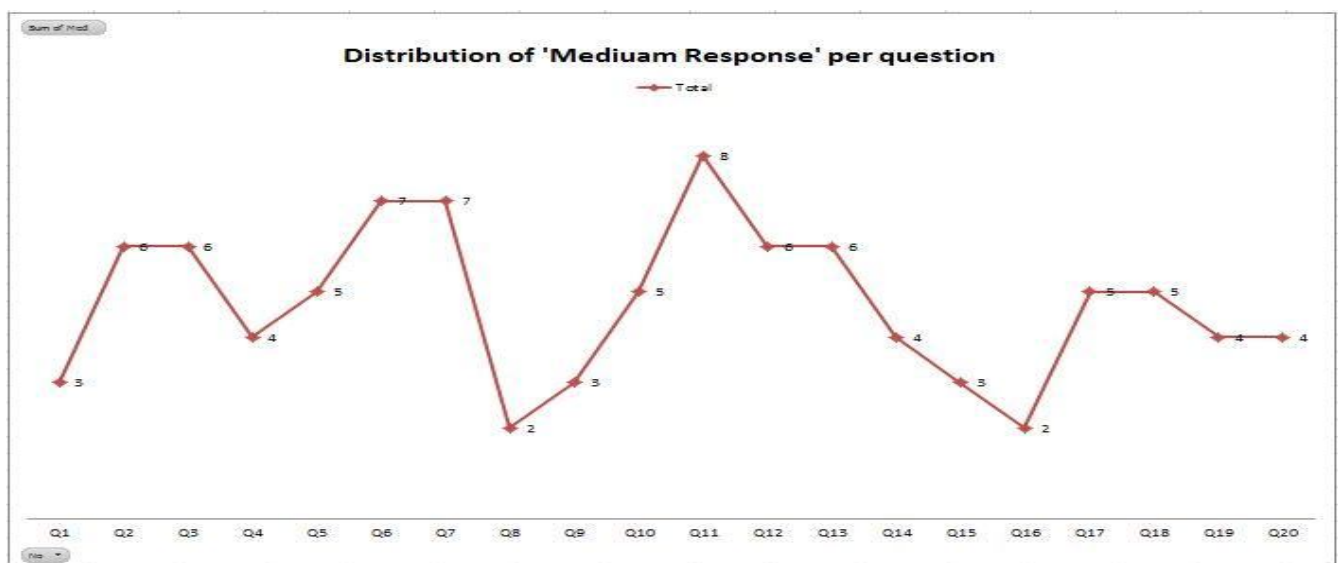


Fig 5: Distribution of 'High Response' per question

4.4 Findings:

We selected 20 questions against which three qualifying categories namely High, Medium, Low were assigned. We got written responses from 12 agencies.

40% of total responses were directed to medium category 35% to high category, 25% to low category. This indicates that R is being followed to medium extent and somewhere to high extent.

For indicator 1 - 'In procurement activities transparency and accountability has been ensured'. High level frequency distribution is dominant. This means most procuring entities are ensuring transparency and accountability in their procurement activities.

For indicator 2 - 'Fraudulent, collusive or coercive practice has been avoided'. Medium level frequency distribution is dominant. So fraudulent, collusive or coercive practice has been avoided to a medium extent.

For indicator 3- 'Fair competitions have been ensured'. Medium & high level frequency distribution is dominant. This indicates fair competition has been ensured in most of the procuring entities.

For indicator 4 - 'PE maintains records relating to issue of Procurement related documents'. High level frequency distribution is dominant. This implies that the rate of maintaining procurement related record.

For indicator 5 - 'Justified procurement method has been selected'. High and medium level frequency distribution is dominant. The practice of selecting justified procurement method is prevalent to a good extent.

For indicator 6- 'Reasonable procurement plan has been prepared'. Medium level frequency distribution is dominant. This means that a reasonable procurement plan is made with a medium level of reasonability.

For indicator 7 - 'Evaluation of tenders and proposals has been completed within the time limit'. Medium level frequency distribution is dominant. This indicates that evaluation of tenders and proposals within time limit is in a good range.

For indicator 8- 'Tender securities have been forfeited'. Low level frequency distribution is dominant. This is a symptom of good procurement practice.

For indicator 9- 'Proper procedure has been followed in preparation of technical specifications of goods etc'. High level frequency distribution is dominant. In preparing technical specifications proper procedure is followed in most of the cases.

For indicator 10- 'Safe custody of received tenders and restrictions on the disclosure of information relating to procurement has been ensured'. Medium level frequency distribution is dominant. The practice of keeping received tenders and maintaining restrictions on the disclosure of information relating to procurement is of a good level.

For indicator 11- 'All tenders, proposals or quotations have been rejected'. Medium level frequency distribution is dominant. There is still a good number of cases where all tenders, proposals or quotations have been rejected.

For indicator 12- 'Proper approval procedure has been followed'. Medium level frequency distribution is dominant. Proper approval procedure has been followed in a good number of procurement cases.

For indicator 13- 'Contract has been terminated smoothly'. Medium level frequency distribution is dominant. The rate of smooth contract termination is good.

For indicator 14- 'Compensation events'. Low level frequency distribution is dominant. Low level of compensation event indicates smooth termination of contract and contract management.

For indicator 15- 'Subcontractor or sub-consultant has been appointed'. Low level frequency distribution is dominant. This means that the rate of involving subcontractor or sub consultant is not high.

For indicator 16 - 'Events of Joint venture'. Low level frequency distribution is dominant. This means that the rate of forming joint venture is still low.

For indicator 17- 'Complaint has been submitted to review panels'. High and Medium level frequency distribution is dominant. A good number of complaints is still placed before review panels.

For indicator 18- 'Circumstances are prevalent for adopting other procurement methods than preferred ones'. Medium level frequency distribution is dominant. This means that circumstances for adopting other procurement methods than preferred ones are present in many procuring agencies.

For indicator 19- 'Proper monitoring has been ensured by CPTU and professional misconduct, offences etc have been tried'. High, Medium and low level frequency distribution is dominant. Response is evenly distributed.

For indicator 20-‘e-Government Procurement has been used’. High and medium level frequency distribution is dominant. The practice of adopting e Government procurement is of good index.

4.5 PPR and its impact on controlling ‘Quality of Work’

For any work, quality is very important. In case of procurement work, five rights are very important, these are quality, quantity, cost, time. All these are interdependent. Achieving five rights at a time is the ultimate goal. But it is very difficult to achieve all these rights together. Sometimes we have to trade among these rights depending on the demand of situations. For emergency moment, cost right may not be achieved and needs to be trade with time; and also quality right may or may not be achieved.

Quality is a relative term. There is a misperception among us that, quality means the best one. But it is not always true. Quality can be defined as-‘*fit for purpose*’. For various purposes, we need various types of products. The products/ goods that serves the purpose accurately that is the quality goods.

Chapter-5 : Conclusions and Recommendations

5.1 Conclusions

Compliance monitoring of PPR 2008 is a vital issue for insuring good standards and value for money in the public procurement. The PPRP II has added a new dimension in the field of monitoring in the sense that it envisages to assess the compliance of the provisions of PPA-2006 and PPR-2008. This has made a shift from the existing approach and methods in dealing with procurement using public funds. Though awareness to some extent about PPA 2006 and PPR 2008 has already been developed within the officials and staffs of different procuring entities through mandatory application of PPR 2008 in practice and training, it will certainly take some time to get momentum of the reform activities.

At the end of the thesis it can be concluded that the target agencies are complying with PPA 2006 and PPR 2008 to a good extent. Other agencies are also following but not up to the mark all the time. There are still many irregularities. Some Agencies follow Public Procurement Regulations. Some don't use STDs. They simply issue one-paper document particularly in the agencies of low value procurement. Corrupt, Coercive, Collusive, Fraudulent practice is prevalent though not in the extent as were before. The practice of lottery has been a common practice in some agencies. Contractors are more matured than before. Number of cases submitted to review panels reveals their consciousness. At the same time there are many amateur contractors who are not acquainted enough with this act and rules.

5.2 Recommendations

For improvement of these situations, five specific recommendations have been drawn. These are (i) to induce a mechanism for ensuring safe custody of received tenders, (ii) to ensure smooth termination of contract, timely payment to the contractors, tender should be floated only after availability of sufficient fund, (iii) Adopting proper and justified procurement method (iv) approved guidelines to be followed in tender opening and evaluation and (v) act and rules regarding professional misconduct and other offences should be followed strictly. Procurement personnel from other agencies should also be trained on PPA and PPR.

5.3 Future Research Direction

A comprehensive study will be possible based on this research work. All other procuring entities can be included. Sustainability, value for money (VFM), analysis in terms of triple bottom line (profit, people, planet), 360 degree feedback-these issues can be incorporated. Customer/consumer perspectives, supplier/contractor/consultant perspective can be included.

Instead of traditional procedure, submission of TER directly to the Contract Approving Authority where Approving Authority is HOPE or below, should be practiced properly to ensure the compliance of Rule 36(3) of PPR 2008. The TEC should be empowered and every member of the TEC should have an understanding of this regulatory requirement. Proper mechanism should be developed within LGED so that it can be complied.

- ☐ Tender should be floated only after having availability of sufficient fund. This would ensure the timely payment to the contractor [Rule 39 (22)]
- ☐ Liquidated damage clause to be properly applied as per Rule 39 (27) of PPR 2008. The amount of liquidated damage per day or per week should be calculated on the basis of approximate real monetary loss for delay, not just on the basis of blind guessing. Compensation event needs to be properly incorporated in the tender document so that contractors can get appropriate compensation if the situation arises so.
- ☐ Provision for payment of interest in case of delayed payment should be kept in the contract and implemented accordingly so that the rights of the contractor can be protected.

5.4 Implication

To depict the overall scenario of procurement in Bangladesh more study needs to be conducted. In my research a cross-section of Procuring agencies has been selected which necessarily do not bring into light the real picture of procurement in all other procuring entities.

Appendix-A: Sample Questionnaire

Institute of Governance Studies (IGS)

BRAC University

Survey Questionnaire

Research Topic: STRATEGIC COMPLIANCE OF PPR AND PPA AND LEVEL OF SERVICE RENDERED IN GOVERNMENT AGENCIES

This is a survey questionnaire for conducting a case study to find out how different government agencies comply with PPA and PPR mostly in strategic point of view. . It is a part of academic necessity for the Masters in Procurement and Supply Management in the Institute of Governance Studies (IGS), BRAC University. Your honest response is valuable for the researcher. The researcher assures you that the information given by you will be kept confidential & will be used only for the academic purpose.

Part A: Respondent's Profile [Please encircle () where appropriate]

1. Name of the respondent :

2. Designation :

3. Name of the organization :

4. Job Experience (years) :

<5	5-10	11-15	16-20	>20
----	------	-------	-------	-----

5. Educational qualification

(Last degree obtained)

7. Do you have training on

PPA and PPR 2008?

Yes / No.

Part B: The following statements ask you about the indicators you are practicing in your procurement activities according to PPA'2006 and PPR'2008

Please put only tick marks in the cell you think to be appropriate
(High=5,Medium=3,Low=1)

Sl	Indicators	High	Medium	Low
----	------------	------	--------	-----

1	In procurement activities transparency and accountability has been ensured.			
2	Fraudulent, collusive or coercive practice has been avoided.			
3	Fair competition has been ensured.			
4	PE maintains records relating to issue of Procurement related documents			
5	Justified procurement method has been selected			
6	Reasonable procurement plan has been prepared			
7	Evaluation of tenders and proposals has been completed within the time limit.			
8	Tender securities have been forfeited			
9	Proper procedure has been followed in preparation of technical specifications of goods etc.			
10	Safe custody of received tenders and restrictions on the disclosure of information relating to procurement has been ensured			
11	All tenders, proposals or quotations have been rejected.			
12	Proper approval procedure has been followed.			
13	Contract has been terminated smoothly.			
14	Compensation events.			
15	Subcontractor or sub-consultant has been appointed.			
16	Events of Joint venture.			
17	Complaint has been submitted to review panels.			
18	Circumstances are prevalent for adopting			

	other procurement methods than preferred ones.			
19	Proper monitoring has been ensured by CPTU and professional misconduct, offences etc have been tried.			
20	e-Government Procurement has been used.			

REFERENCES

- Central Procurement Technical Unit (CPTU). (2013). Implementation Monitoring and Evaluation Division (IMED), Ministry of Planning (MoP), Government of the People's Republic of Bangladesh, retrieved on 19 February 2013 from <http://www.cptu.gov.bd/>.
- GoB (2008). Government of the People's Republic of Bangladesh. Bangladesh Gazette, dated: 28 January 2008.
- Hasan, M. M. M.. Mehedy, (2012). "Practices of PPA and PPR on Public Procurement in Bangladesh Water Development Board: A Critical Review. MPSM thesis, BRAC University.
- Hoque, R. (2010). 'Public Procurement Law in Bangladesh: From Bureaucratisation to Accountability', *NUJS LAW REVIEW*, vol.3, no.3, pp. 281-29, retrieved on 20 June 2011
- Islam M.S. (2011). "Improving Transparency in Public Procurement in Bangladesh: Use of Right to Information and Whistleblower's Protection laws at sub national level", paper presented in the USA.
- MoF (2004). Delegation of Financial Powers for Development Projects, Finance Division, Ministry of Finance(MoF), Government of the People's Republic of Bangladesh, dated: 22 December 2004.
- MoP (2008). Public Procurement Act (PPA) (2006), Central Procurement Technical Unit CPTU), Implementation Monitoring and Evaluation Division (IMED), Ministry of Planning (MoP), Government of the People's Republic of Bangladesh. Bangladesh Gazette, dated: 27 January 2008.
- MoP (2008). Public Procurement Rules (PPR) (2008), Central Procurement Technical Unit (CPTU), Implementation Monitoring and Evaluation Division (IMED), Ministry of Planning,
- MoP (2012). Annual Development Programme (ADP) 2012-2013. Ministry of Planning (MoP), Government of the People's Republic of Bangladesh.
- MoP (2012). Revised Annual Development Programme (RADP) 2011-2012. Ministry of Planning (MoP), Government of the People's Republic of Bangladesh.
- Rahman,Md. Mahfuzar, (2013). "Compliance of PPR 2008: A Study on LGED Based on KPIs", BRAC University.
- SRGB (2012). Half-yearly Reports (July-December 2010 to January-June 2012) submitted to CPTU, IMED. Survey and Research Group of Bangladesh (SRGB).

- SRGB (2012). Quarterly Reports (April-June 2010 to April-June 2012) submitted to CPTU,IMED. Survey and Research Group of Bangladesh (SRGB).
- Velimirovic, D., Velimirovic, M., and Stankovic, R. (2011). Role and Importance of Key Performance Indicators measurement. *Serbian Journal of Management* 6 (1) (2011) 63 - 72